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Ariz. state treasurer agrees with budget challenge



Taking aim at the state budget produced by Gov. Janet Napolitano, State Treasurer Dean Martin said Monday that a requirement that local governments cough up nearly \$30 million to help keep the state in the black violates the Arizona Constitution.

Martin also said a lawsuit filed by municipalities to challenge the requirement for cities, towns and counties to pay \$29.7 million should be expanded to also challenge three other budget provisions he called unconstitutional.

Martin said all four budget provisions violate a state constitutional provision that bars raising taxes or taking other steps that otherwise increase state revenue without approval by two-thirds of both chambers of the Legislature. The House and Senate approved the budget bills, which were opposed by most Republican lawmakers, by smaller margins.

The \$29.7 million payment provision also violate a separate constitutional provision against including unrelated provisions in one piece of legislation, Martin said.

"Local governments are really just local taxpayers," Martin said in a statement. "This was a very deceptive way to try to shift the state's budget problems to local taxpayers."

Besides the requirement payments by cities, towns and counties, Martin also said budget provisions on photo radar citations, surcharges on defensive driving course fees and a variety of new fees by six agencies also violate the same constitutional provision.

All told, \$100 million is at stake in the four budget provisions, though half of that amount is an estimate for revenue from one provision that didn't have a revenue figure included in the actual budget.

Though \$100 million represents roughly only 1/100th of the state general fund, losing that much money would worsen a projected \$1.2 billion shortfall in the \$9.9 billion budget.

Martin took his stances in a letter to the Attorney General's Office, which represents the Republican treasurer.

"All motions and filings on my behalf shall be in agreement and support of these positions," Martin said. "As my attorney, I am directing you to also ask the court to file a brief in this case that is in agreement with the charges filed by the plaintiffs and request that the court should strike down the act as unconstitutional."

Napolitano spokeswoman Shilo Mitchell said the governor anticipated having a difference of opinion with Martin and had requested and obtained permission from the attorney general to be represented by a Phoenix law firm. Mitchell declined further comment on the pending case.

At the Attorney General's Office, Solicitor General Mary O'Grady said through a spokeswoman that she had just received the letter and had no immediate comment.

Legislative budget analysis have projected revenue from the defensive driving course surcharge at \$10.8 million.

The authorizations for new fees by the departments of Agriculture, Public Safety, Environmental Quality, Health Services and Land and the Radiation Regulatory Agency add up to \$11.1 million.

The DPS provision has already stirred controversy. It authorized the police agency to charge fees to local governments for testing of evidence by the state crime lab.

As approved last June, the budget did not include any revenue from the launch of the state's new photo speed enforcement program and its \$165 citations. However, a November budget-balancing proposal submitted to lawmakers by Napolitano included \$50 million from the program, which started in October.

Republican legislators Tuesday plan to present Napolitano with a counterproposal that centers on elements of the governor's own offering for possible action during a contemplated December special session, said Senate President-designate Bob Burns, R-Peoria.

"We agreed with most of what she had in there," Burns said.

Burns declined to elaborate but indicated last week that it would be hard for lawmakers, especially in the time before a possible special session, to consider Napolitano's proposal to sell some future Arizona Lottery revenue in return for a big upfront payment.

The municipalities league filed its lawsuit Nov. 14 with the Arizona Supreme Court, which has yet to decide whether it will rule on the special-action challenge.

By PAUL DAVENPORT / Associated Press Writer